

**REMARKS**

This is intended as a full and complete response to the Final Office Action dated January 27, 2005, having a shortened statutory period for response set to expire on April 27, 2005. Please reconsider the claims pending in the application for reasons discussed below.

Claims 1-9, 14-22, 24-30, 36, 37 and 39 remain pending in the application and are shown above. Claims 10-13, 23, 31-35 and 38 have been cancelled by Applicants. New claims 40-42 have been added. Claims 1-9, 14-22, 25-29, 36, 37 and 39 are rejected and claims 11-13, 24 and 30 are objected to by the Examiner. Reconsideration of the rejected claims is requested for reasons presented below.

**Claim Rejections - 35 USC § 112**

Claims 8, 9 and 22 recite the limitations directed to "the joint". Prior claim language from which these limitations depend fail to mention a joint. Claims 8 and 22 have been amended to include a joint. There is now sufficient antecedent basis for this limitation in the claim. Thus, Applicants request removal of this rejection.

**Claim Rejections - 35 USC § 102**

Claims 1-5, 18-20, 36-37 and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by *Mazon* (5,507,051).

Regarding claim 1 and 36, the Examiner states "Mazon discloses a prospector tool 10 that is fully capable of being used as a tamping tool." Applicants respectfully traverse the rejection.

*Mazon* discloses a prospector tool having a "shovel [with] a pivotable extending arm thereattached." (Abstract) "The lower end 30 is a cutting edge. The cutting edge is used to cut through shrubs, brush and roots. The face portion 32 has a plurality of small holes 36 therethrough. The plurality of small holes allow the shovel to act as a sieve." (Col. 4, ln. 20-24). *Mazon* does not specifically or impliedly disclose a tamping

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tool. In fact, were the shovel to be used as a tamping tool the sieve holes in the face portion 32 would prevent effective tamping. Therefore, *Mazon* does not teach, show, or suggest a tamper tool assembly comprising a tamping base having an upper surface and a lower surface as disclosed in claim 1 and 36 and claims 1-9, 14-17, 37 and 39 which depend therefrom.

Regarding claim 18, the Examiner states that "Mazon discloses a prospector tool 10 that is fully capable of being used as a tamping tool. Mazon discloses a prospector tool 10 comprising a shovel handle 12 and a collar or locking sleeve 22 that is adjustably coupled with locking threads 20." Applicants respectfully traverse the rejection.

*Mazon* discloses a prospector tool having a "shovel [with] a pivotable extending arm thereattached." (Abstract) "The lower end 30 is a cutting edge. The cutting edge is used to cut through shrubs, brush and roots. The face portion 32 has a plurality of small holes 36 therethrough. The plurality of small holes allow the shovel to act as a sieve." (Col. 4, ln. 20-24). The shovel is not flat but is a curved surface as shown in fig. 4. Further, the shovel has at least 5 sides as shown in fig. 1-3 and 5. As discussed above, the shovel is not a tamper tool. Therefore, *Mazon* does not teach, show, or suggest a tamping base having an upper surface and a four-sided, *planar* lower surface as disclosed in claim 18 and claims 19-24 which depend therefrom.

**Claim Rejections - 35 USC § 103**

Claims 1-9, 15, 16, 18-22 and 25-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over *McNamara* (3,739,562) in view of *Mazon* (5,507,051). Applicants respectfully traverse these rejections.

In order to establish a prima facie case of obviousness based on the prior art, the Examiner must show some "objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references." *In re Fritch*, 972 F.2d 1260, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). "The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious

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unless the prior art suggested the desirability of the modification." *Id.* at 1783-84. Moreover, "it is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious." *Id.* at 1784.

Regarding claim 1, Examiner states that "McNamara fails to disclose that the tool has two clamping surfaces formed 90-degrees apart being matable with the collar."

*Mazon*, as discussed above does not disclose a tamper tool but a shovel with a "face portion having a plurality of small holes therethrough, the plurality of small holes serving to sift sand." (Claim 1). *Mazon* teaches away from a tamper tool. There is no objective teaching in the prior art to combine the references. Therefore, *McNamara* in view of *Mazon* does not teach, show, or suggest a tamper tool assembly having a tamping base having an upper surface and a lower surface and at least two clamping surfaces formed 90 degrees apart as disclosed in claim 1 and claims 1-9 and 14-17 which depend therefrom. The Examiner has merely used hindsight based on the Applicants' disclosure to piece together various prior art in order to render obvious the Applicants' claimed invention.

Regarding claim 18, the Examiner states that "McNamara fails to disclose that the tool has two clamping surfaces formed 90-degrees apart being matable with the collar."

*McNamara* discloses a garden tool with a "[t]ool member 15 [which] is of generally flat plate material with working edge 16 sharpened to a knife edge 27, and opposed working edge 18 formed with rake teeth 17." (Col. 1-2, ln. 64-2). Figures 1-4 and 6 show the tool member 15 having more than four sides. As discussed above *Mazon* does not disclose a tamper tool, or a planar four sided surface. There is no objective teaching in the prior art to combine the references. Therefore, *McNamara* in view of *Mazon* does not teach, show, or suggest a tamping base having an upper surface and a four-sided, planar lower surface and at least two clamping surfaces formed 90 degrees apart as disclosed in claim 18 and claims 19-24 which depend therefrom.

Regarding claim 25, Examiner states that "McNamara fails to disclose that the tool has two clamping surfaces formed 90-degrees apart being matable with the collar."

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Further, *McNamara* discloses "a [r]otatable joint assembly 20 consisting of a serrated member 21 fastened to the handle member 11, with a serrated member 20 fastened to the tool member 15. (Col. 2, ln. 12-14). *Mazon*, as discussed above does not disclose a tamper tool but a shovel with a "face portion having a plurality of small holes therethrough, the plurality of small holes serving to sift sand." (Claim 1). *Mazon* teaches away from a tamper tool. There is no objective teaching in the prior art to combine the references. Therefore *McNamara* in view of *Mazon* does not teach, show, or suggest a tamper tool assembly comprising a collar threadably attached to the distal end of a handle and a tamping base having an upper surface and a lower surface as disclosed in claim 25 and claims 26-30 which depends therefrom. The Examiner has merely used hindsight based on the Applicants' disclosure to piece together various prior art in order to render obvious the Applicants' claimed invention.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over *McNamara* in view of *Mazon*, as applied to claim 1 above, in further view of *Bator* (2,994,262). Claim 14 depends from claim 1. As stated above Applicants submit that claim 1 is in condition for allowance and thus dependent claim 14 is also in condition for allowance.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over *McNamara* in view of *Mazon*, as applied to claim 16 above, in further view of *Carmien* (Re. 32,364). Claim 17 depends from claim 1. As stated above Applicants submit that claim 1 is in condition for allowance and thus dependent claim 17 is also in condition for allowance.

For the reasons stated above Applicants submit that claims 1-9, 15-22, 24-30 and 36, 37 and 39 are in condition for allowance and respectfully request allowance of the same.

**Allowable Subject Matter**

Claims 11-13, 24 and 30 have been objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 11 has been

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cancelled and rewritten as new claim 40 and includes all of the limitations of the base claim and any intervening claims, further claim 12 has been cancelled and rewritten as new claim 41 which depends from claim 40. Claim 13 has been cancelled and rewritten as new claim 42 and includes all of the limitations of the base claim and any intervening claims. Applicants submit that claims 40-42 are in condition for allowance and respectfully request allowance of the same.

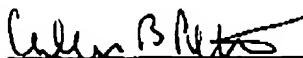
### New Claims

As discussed above new claims 40-42 have been added. As discussed above Applicants submit that claims 40-42 are in condition for allowance and respectfully request allowance of the same.

### Conclusion

Having addressed all issues set out in the Final Office Action, Applicants respectfully submit that the claims are in condition for allowance and respectfully request that the claims be allowed. In conclusion, the references cited by the Examiner, alone or in combination, do not teach, show, or suggest the invention as claimed.

Respectfully submitted,



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